

APPEAL NO. 010382

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 22, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the eighth and ninth quarters.

The claimant appealed, contending that he had a total inability to work and was recuperating from surgery during a portion of the qualifying periods. The respondent (carrier) responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on January 26, 2001, under a cover letter of the same date. The claimant, in his appeal, states that he received the hearing officer's decision and order on January 29, 2001.

Section 410.202(a) provides that a request for review shall be filed no later than the 15th day after the date on which the hearing officer's decision is received. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 991565, decided August 23, 1999 (Unpublished).

The last day for the claimant's appeal to have been timely mailed was Tuesday, February 13, 2001, and the last day for timely receipt was Tuesday, February 20, 2001. (The 20th day after receipt of the hearing officer's decision was Sunday, February 18, 2001, and the next business day was Tuesday, February 20, 2001, because February 19, 2001, was a national holiday (President's Day)). Rule 102.3(a)(3).

The claimant's appeal is postmarked February 13, 2001, and therefore was timely mailed. However, the address on the envelope indicates that it was sent to a wrong (prior) post office box address and the claimant's appeal was not received until February 21, 2001. We note that the address on the hearing officer's decision, which instructs where the appeal is to be mailed, contains the current, correct post office box number. The claimant's appeal, having been received after February 20, 2001, was not timely filed.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge